

REMARKS

Claims 83-88, 90-103 and 105-107 are pending in the above-identified application.

Removal of Issues Under 35 U.S.C. 112

Claims 104 and 109 have been rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to satisfy enablement requirements.

Claims 104 and 109 have been cancelled so as to remove the basis for this rejection.

Claims 87-89, 97, 104, 108, 113 and 114 have been rejected as allegedly being indefinite.

Claims 89, 104, 108, 113 and 114 have been cancelled so as to remove the bases for these rejections.

Claims 87, 88 and 97, have been amended so as to claim recited Markush group members in the alternative and so as to remove duplicates of the phrase “and pharmaceutically acceptable salts”. Therefore, all of the bases for these rejections have been removed.

In view of the above, it is requested that all of the above rejections under 35 U.S.C. 112 be withdrawn.

Removal of Issues Under 35 U.S.C. 102(b)

Claims 83, 96, 104-107, 109-112 and 114 have been rejected under 35 U.S.C. 102(b) as being anticipated by either Teuber ‘630 (USP 5,554,630) or Teuber ‘194 (WO 96/33194). Claims 104, 109 and 114 have been cancelled. This rejection is traversed, since upon inspection of the definitions recited in the present claims it is apparent that the compounds disclosed by Teuber ‘630 and Teuber ‘194 fall outside the scope of the present claims.

Teuber '630 discloses in Table 1 at columns 21-22 compound 26a which includes an oxidiazole moiety bonded to both a pyridyl moiety and a phenyl moiety that is in turn bonded to a substituted benzimidazole moiety. Teuber '194 discloses this same type of compound at page 42 in Table 1 thereof, though the benzimidazole moiety has a different substituent (i.e. an oxole substituent rather than a t-butyl substituent). Note that a benzimidazole moiety is a heteroaryl moiety.

The claims of the present application are not anticipated by the Teuber disclosures. Referring to Formula (II) in claim 83 of the present application, it is clear that the substituted benzimidazole moiety of Teuber '630 or Teuber '194 must fall within the definition of the various substituents of "Ar²". However, this list of moieties does not include any "heteroaryl". Thus, since the present invention does not claim Ar² being a phenyl substituted by a heteroaryl group, the compounds disclosed by Teuber '630 and '194 fail to anticipate or render unpatentable any of the compounds, or methods employing these compounds, of the present invention. Consequently, it is requested that the above-noted rejections under 35 U.S.C. §102(b) be withdrawn.

Removal of Double Patenting Rejection

Claims 83-114 have been rejected under the judicially created doctrine of double patenting over claims 1-58 of previously granted U.S. Patent No. 6,660,753. In order to remove this double patenting rejection, a Terminal Disclaimer is enclosed. Consequently, it is requested that this double patenting rejection be withdrawn.

Conclusion


It is submitted for the reasons stated above that the present claims define patentable subject matter such that this application should now be placed condition for allowance.

If any questions arise regarding the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 02-2448, under Order No. 5998-0506PUS3 from which the undersigned is authorized to draw.

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Respectfully submitted,

By 
Andrew D. Meikle
Registration No.: 32,868
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Rd
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant

Enclosure: Terminal Disclaimer